

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1975 CUTTACK, THURSDAY, NOVEMBER 27, 2014/MARGASIRA 6, 1936

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 11th November 2014

No. 8978—IR (ID)-130/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2014 in I. D. Case No. 9 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Managing Director, M/s Aglowmed Ltd., Plot No. 702-A, Poonam Chambers, Dr. A. B. Road, Worli, Mumbai-18/The Branch Executive M/s Aglowmed Ltd., At/P.O. Manglam Niwas, 4th Floor, Bajra Kabati Road, Cuttack and its Workman Shri Narendra Kumar Sahoo was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 9 OF 2012

Dated the 16th September 2014

Present :

Shri S. K. Sahoo, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Managing Director,
M/s Aglowmed Ltd., Plot No. 702-A,
Poonam Chambers, Dr. A. B. Road,
Worli, Mumbai-18.
The Branch Executive,
M/s Aglowmed Ltd.,
At/P.O. Manglam Niwas,
4th Floor, Bajrakabati Road, Cuttack.

.. First Party—Management

And

Its Workman,
Shri Narendra Kumar Sahoo,
S/o Shri Bhramarbar Sahoo,
At Sanawaisari, Post. Parvatipur,
Via. Biridi Road, Dist. Jagatsinghpur.

.. Second Party—Workman

Appearances :

Shri B. K. Raj, Advocate	..	For the First Party—Management Nos. 1 & 2
Shri Subrata Kumar Mishra, Advocate	..	For the Second Party—Workman

AWARD

The Government of Odisha, in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their Letter No. 2915—IR (ID)-130/2011-LESI., dated the 12th April 2012.

“Whether duties of Shri Narendra Kumar Sahoo, Junior Store Officer can be deemed as workman under Section 2 (s) of the I.D. Act ? If yes, whether the action of the management of M/s Aglowmed Ltd., in terminating the services of Shri Narendra Kumar Sahoo, Junior Store Officer, Cuttack with effect from the 14th February 2011 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to?”

2. The case of second party workman is that he was appointed as Peon-cum-Packer by the first party management on 1-6-1987 with a consolidated salary of Rs. 650 per month vide Letter No. PER/191/1987, dated the 12th August 1987. He was under probation for one year and thereafter confirmed in the said post with effect from the 1st June 1988 vide Letter No. PER/209/87-88, dated the 16th May 1988. Being satisfied with the work of the second party he was promoted to the post of Despatch Assistant with effect from the 1st January 1991 by order, dated the 1st September 1991. Again he was promoted and posted as Junior Store Officer with effect from the 1st April 2009 by Letter No. 9284—AG/2009-2010, dated the 9th July 2009. However, during his service as Junior Store Officer he was illegally terminated. His monthly salary was Rs. 9,480 at the time of termination. While continuing as a Junior Store Officer, he was orally suspended on 22-12-2010 basing on some false allegations. He was not allowed to perform his duty by the first party although in each working day he approached the management to allow him to work. The management has also not paid the subsistence allowance during his suspension period. On 6-1-2011 a show cause notice was issued to the second party in which he was asked to submit statement of defence within a period of 7 days failing which the first party shall proceed with a Criminal Case against the workman under Section 420 IPC and to recover the goods and money from him. On 7-1-2011 the second party had submitted his statement of defence by denying the allegations made against him. By Letter No. 9989—EER/2010-2011, dated the 31st January 2011 the first party had asked the second party to appear before the Enquiry Committee on 10-2-2011 at the Headquarter's Office, Mumbai. In the said letter the second party was informed that he will be paid second class train fare and local travelling expenses to attend the enquiry at Mumbai. On 1-2-2011 the second party submitted his reply informing the management that he is unable to attend before the Enquiry Committee due to his poor financial condition and ill health. Surprisingly vide Letter No. 8453—AG-2010-2011 Dt. 15-2-2011 the second party was terminated from his service with effect from the 14th February 2011 retrospectively. The termination of service amounts to retrenchment as per Section 2(oo) of

the I.D. Act, 1947. The first party has not complied the provisions of the I.D. Act before retrenchment of the second party. Hence, the termination of service of the second party by the first party is illegal. The second party has prayed for reinstatement in his service with full back wages along with consequential service benefits.

3. The case of the first party management is that the first party has rightly terminated the service of the second party after giving him a reasonable opportunity for hearing. At the time of termination the second party was serving as Junior Store Officer in a managerial capacity and he was getting gross remuneration of Rs. 1,37,367 per annum. So, the remuneration of the second party per month is more than Rs. 10,000 for which he is not entitled for any relief from this Court. As the Junior Store Officer from 1-4-2009 the second party being incharge of the godown started misutilising his position. He along with other senior staffs of the company connived with superior staffs prepared dummy invoices in the name of some authorised country stockist but despatched the goods to the local vendors illegally without taking receipt from them, which caused financial loss to first party and furnished the image of the first party in the market. The second party was never put under suspension orally from 22-12-2010. On the other hand he had made an application for leave from 13-12-2010 to 23-12-2010 and thereafter he also did not attend office voluntarily. Intentionally he did not attend his duty due to misappropriation of the goods of the first party by him. As the second party was never put under suspension he is not entitled to subsistence allowance. A sum of Rs. 6.13 lakhs are outstanding against the parties of Sambalpur, Balangir and Jeypore against the goods delivered from the godown by the second party. It is ascertained that goods worth of Rs. 11.82 lakhs were illegally delivered to M/s Durga Electronics (who is not the Authorised Stockist) as per the instructions of the Depot Officer forging the delivery of goods. A notice was sent to the second party on 6-1-2011 inviting him for his statement of defence relating to such financial loss to the first party. In his reply dated the 7th January 2011 he admitted that he has not supplied the goods to the Authorised Stockists but claimed that he has done so as per the oral instructions of his superiors. He failed to produce any written instructions of his superiors which indicates that he had connived with those Senior Officials. The second party did not appear before the Enquiry Committee although an opportunity was given to him to explain and clarify the financial irregularity committed by him. The plea taken by him that due to his poor health and financial condition he could not attend the enquiry is not correct. In the letter the second party was communicated that the first party will pay the fare, and expenses to attend the enquiry. The order of termination is not an order of retrenchment for which compliance of Section of 25-F of the I.D. Act. was not necessary. The second party was terminated from his service due to unsatisfactory work and misappropriation of the property of the company. The company had lost confidence on him and has taken step for recovery of the misappropriation amount from the second party. After termination of the second party he joined in a C. & F. Agent based at Bhubaneswar but due to close watch of the Proprietor he left his service and now working in M/s ASHORE Group in Pharma Division, Head Office at Chandan, First Floor B-32, Ashok Nagar, Bhubaneswar as a Store Incharge from March 2012 and getting salary of Rs. 7,500. The termination of the service of the second party by the first party management is legal and justified. The second party is not entitled for any relief.

4. Taking into consideration the pleadings of the parties the following issues are settled :—

ISSUES

- (i) Whether duties of Shri Narendra Kumar Sahoo, Junior Store Officer can be deemed as workman under Section 2 (s) of the I.D. Act ?
- (ii) If yes, whether the action of the management of M/s Aglowmed Ltd. in terminating the services of Shri Narendra Kumar Sahoo, Junior Store Officer, Cuttack with effect from the 14th February 2011 is legal and/or justified ?
- (iii) If not, what relief Shri Sahoo is entitled to ?

5. The second party is examined as W.W. 1 and Exts 1 to 11 are marked Ext. 1 is the photo copy of the appointment letter of the second party. Ext. 2 is the photo copy of confirmation letter. Ext. 3 is the photo copy of letter of promotion on 9-1-1991. Ext. 4 is the photo copy of letter of promotion on 9-7-2009. Ext. 5 is the photo copy of show cause notice on 6-1-2011. Ext. 6 is the reply of show cause notice on 7-1-2011. Ext. 7 is the photo copy of letter on 31-1-2011 to attend before the Enquiry Committee. Ext. 8 is the photo copy of representation on 1-2-2011. Ext. 9 is the photo copy of dismissal order, Dt. 15-2-2011. Ext. 10 is the photo copy of F.I.R. in G. R. Case No. 344 of 2011 of Mangalabag Police Station. Ext. 11 is the photo copy of the increment letter of the second party workman. On the other hand two witnesses are examined on behalf of the management and Exts. A to D are marked. M.W. 1 is the Accounts Officer and M.W. 2 is the Assistant Branch Manager of the first party organisation. Ext. A is the leave application of the second party, Dt. 30-11-2010. Ext. B is the photo copy of the increment letter. Ext. C is the photo copy of resolution, Dt. 27-7-2012 and Ext. D is the Internal Audit Report, Dt. 26-2-2011.

FINDINGS

6. *Issue No. (i)*—One Narendra Kumar Sahoo has filed claim statement in which he has claimed to be a workman under the first party management terminated on 14-2-2011 while serving as Junior Store Officer. On the other hand it is the specific plea of the first party management that the second party being a Junior Store Officer is not coming under the definition of “workman” under Section 2 (s) of the I.D. Act., 1947. It is the settled principle of law that the designation of an employee is not material to decide whether he is a workman or not, but the nature of work is to be considered. It is admitted by the parties that the second party was appointed as Peon-*cum*-Packer with effect from the 1st June 1987 and subsequently confirmed in the said post with effect from the 1st January 1988 vide Ext. 2. Vide Ext. 3 the second party was promoted to the post of Despatch Assistant with effect from the 1st January 1991 and again promoted to the post of Junior Store Officer with effect from the 1st April 2009 Vide Ext. 4, with a basic salary of Rs. 5,930. These facts are not disputed by the first party management. Both M.W. 1 and 2 testified that the second party is not a workman being posted in the supervisory cadre as Junior Store Keeper. In his cross-examination at Paragraph-27 during his cross-examination M.W. 2 admitted that the second party had two functions namely maintenance of stocks and disbursement of medicines as per invoice received from the Authority. So it appears from the evidence of M.W. 1, who is the Accounts Officer of the first party organisation

that the second party was not entrusted with any supervisory work but only clerical work. After analysing the evidence on record, it is clear that the second party was a workman under the first party management. This issue is answered in favour of the second party.

7. *Issue No. (ii)*— It is alleged by the second party that he was illegally terminated from his service by the first party on 14-2-2011. On the other hand, it is the case of the first party that after a domestic enquiry conducted against the second party as per law he was terminated from his service. There is no dispute regarding the engagement of the second party under the first party as Junior Store Officer. It is also the case of the second party that he was orally put under suspension on 22-12-2010 without any suspension allowance. In reply to it the case of the first party management is that the second party had applied for leave from 13-12-2010 till 22-12-2010 and after expiry of such leave he did not join in his duty when he came to know that the first party had already detected the misappropriation by him. W.W. 1 in his evidence also deposed that on 22-12-2010 he was orally put under suspension without suspension allowance. M.W. 1 and M.W. 2 testified that the second party had applied for leave from 13-12-2010 to 22-12-2010 but after expiry of the leave period he did not join in his duty. Ext. A is the leave application submitted by the second party, Dt. 1-12-2010. On perusal of the same it is clear that the second party had applied for leave till 22-12-2010. Except this oral evidence of W.W. 1 there is no document to show that he was orally suspended and the first party did not allow him to work although he was going to perform his work. No other witness is examined to corroborate the evidence of W.W. 1, for which it is not reliable and trust worthy. On the other hand it is clear from the evidence of the witnesses examined on behalf of the first party that after expiry of the leave period the second party did not resume his duty.

8. From the evidence of both the witnesses examined by the first party it appears that the second party was terminated from his service after a domestic enquiry. Ext. 5 is the show cause notice on 6-1-2011 which was issued to the second party in his native address i.e. At Sanawaisari, P.O. Parvatipur, Via Biridi Road, Dist. Jagatsinghpur, Ext. 6 is the reply of the second party on 7-1-2011. On perusal of Ext. 6 it is clear that the second party had admitted before the first party that he has supplied the medicines to some Stockists who were not the Authorised Stockist during the period 2010-2011 as per the oral instruction of Sandip Kumar and Biswambar Sarangi, his Senior Officers. In the said document he has also admitted that the medicine delivered was worth Rs. 16,98,853.00. It is admitted by the second party that he had received the show cause notice and notice on 31-1-2011 marked Exts. 5 and 7 respectively. Ext. 8 is the reply to the notice Ext. 7. On perusal of Ext. 8 it transpires that the second party has refused to attend the Enquiry Committee on the 10th February 2011 at Mumbai due to his ill health and financial crisis. In Ext. 7 it has been clearly mentioned that the first party had agreed to reimburse the second class train fair and other expenses to the second party to attend the enquiry at Mumbai. The second party has not placed any documentary evidence regarding his illness. When the first party was ready to reimburse the expenditure to the second party there is no reason for refusal of the second party to attend the Enquiry Committee. The first party has not proved the charge-sheet or the enquiry report of Enquiry Committee. On perusal of Ext. 1 it reveals that the Director of the first party had issued appointment letter to the second party workman. Ext. 9 is the termination letter. It has been issued by the Deputy

General Manager (H.R.). When the appointment of the second party was by the Director of Organisation, the termination by the Deputy General Manager (H.R.) is not legal preferably in absence of any document showing delegation of Power authorising the Deputy General Manager (H.R.) to discharge the functions of the Director. It is also clear from Ext. 7 that D.G.M (H.R.) Mr. Manoj Naik, was one of the members of the Enquiry Committee formed to enquire against the second party. He being a members of the Enquiry Committee, termination of the second party by him is also not just and fair. It is also against the principles of natural justice. So, after analysing the evidence on record it is clear that the termination of the second party by the first party on 14-2-2011 is not legal or justified. This issue is answered accordingly.

9. *Issue No. (iii)*— In view of analysis of evidence on record it is clear that the second party has not attended his duty from 22-12-2010 and he was not suspended by the first party. So the second party is not entitled for any suspension allowance. He is also not entitled for any back wages from 22-12-2010, in view of the principle “No work no pay”. However, the second party workman is entitled for reinstatement in service and accordingly the first party management is directed to reinstate the second party workman within one month of publication of the Award without any back wages.

Dictated and corrected by me.

S. K. SAHOO
16-9-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
16-9-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government